

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF PUERTO RICO

3 ROLANDO ORTEGA-CANDELARIA,

4
5 Plaintiff,

6 v.

7 JOHNSON & JOHNSON, et al.,

8
9 Defendants.
10

Civil No. 08-2382 (JAF)

11 **OPINION AND ORDER**

12 We must decide whether Johnson & Johnson acted arbitrarily and capriciously when
13 it denied long-term disability benefits under an ERISA-covered employee welfare benefit
14 plan.

15 **I.**

16 **Factual and Procedural History**

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19 Johnson & Johnson sponsors a self-funded, employee welfare benefit plan (“Plan”).
20 (Docket No. 28-3 at 32.) This Plan provided long-term disability healthcare benefits to the
21 employees of a number of affiliated companies, including OrthoBiologics, a limited liability
22 company and a wholly-owned subsidiary of Johnson & Johnson. (Docket No. 66 at 4, 28.)
23 Rolando Ortega-Candelaria worked for OrthoBiologics as an electrician, and he received
24 coverage under the Plan. (Docket No. 66 at 8.) Ortega-Candelaria has been unable to work
25 since December 18, 2002, on account of constant pain due to vertebral herniations. He
26 requested payments of benefits under the Plan starting in 2003. Defendants denied his
27 requests on multiple occasions, including for a final time on January 26, 2005.

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1 Ortega-Candelaria filed a complaint in federal district court on December 14, 2008.
2 (Docket No. 1.) On April 7, 2009, Codefendants moved to dismiss. (Docket No. 17.)
3 Plaintiff opposed on April 21, 2009 (Docket No. 18), Codefendants replied on May 11, 2009
4 (Docket No. 23), and Plaintiff sur-replied on May 28, 2009 (Docket No. 33). We issued an
5 order and opinion dismissing Ortega-Candelaria's complaint for failure to file suit within the
6 limitations period of the relevant benefits plan. Ortega-Candelaria v. Johnson & Johnson,
7 2009 WL 1812423 (D.P.R. June 25, 2009). Ortega-Candelaria moved for reconsideration.
8 (Docket No. 40). We denied. Ortega-Candelaria v. Johnson & Johnson, 2009 WL 2410895
9 (D.P.R. August 4, 2009). The First Circuit reversed and remanded the case for adjudication
10 on the merits. Ortega Candelaria v. Orthobiologics LLC, 661 F.3d 675 (1st Cir. 2011). On
11 June, 1, 2012, we issued an opinion and order granting Codefendants' motion for judgment
12 on the administrative record. (Docket No. 62.) For the following reasons, we grant
13 Codefendants' motion to dismiss.

14 II.

15 Standard of Review

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18 In an ERISA case like this one, where review is based only on the administrative
19 record and the conclusion as to disability can be drawn only from the facts as presented to
20 the plan administrator, summary judgment is simply a vehicle for deciding the issue. Bard v.
21 Boston Shipping Ass'n, 471 F.3d 229, 235 (1st 2006). Thus, the non-moving party is not
22 entitled to the usual favorable inferences that characterize a summary judgment decision.
23 Orndorf v. Paul Revere Life Ins. Co., 404 F.3d 510, 517 (1st Cir. 2005).

24 We review the plan administrator's decision under an arbitrary and capricious
25 standard because the Plan's governing documents conferred discretion to the plan

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1 administrator to determine benefit eligibility under the Plan. (Docket No. 63-1 at 29.); see
2 Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 115 (1989) (benefit claims under
3 ERISA are “to be reviewed under a de novo standard unless the benefit plan gives the
4 administrator or fiduciary discretionary authority to determine eligibility for benefits or to
5 construe the terms of the plan.”); see also Morales-Alejandro v. Medical Card System, Inc.,
6 486 F.3d 693, 698 (1st Cir. 2007). The application of this standard is not in dispute.
7 (Docket No. 66 at 2.) The arbitrary and capricious standard is deferential, so we will uphold
8 the plan administrator’s decision “if there is any reasonable basis for it.” Madera v. Marsh
9 USA, Inc., 426 F.3d 56, 64 (1st Cir. 2005).

10 III.

11 Discussion

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14 Ortega-Candelaria contends that the decision to deny him long-term disability
15 benefits was arbitrary and capricious because (A) the administrator had no justification for
16 finding that Ortega-Candelaria did not cooperate with the evaluating physician’s
17 examination, and (B) the administrator did not give proper deference to the findings and
18 conclusions of Ortega-Candelaria’s treating physician, Dr. Oscar Ramos-Román. (Docket
19 No. 66 at 22-23). Neither of the plaintiffs’ arguments is persuasive.

20 The plan administrator had ample reasons for concluding that Ortega-Candelaria did
21 not cooperate with the functional capacity evaluation administered on November 20, 2004.
22 Based on that evaluation, the evaluator could not make any assessment of Ortega-
23 Candelaria’s functional capacity because he had refused to perform “all material and most
24 of the non-material handling activities.” (Docket No. 73-1 at 8.) The evaluator found that
25 Ortega-Candelaria consistently performed at a sub-maximal level. Id. The evaluator even

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1 observed a video tape of Ortega-Candelaria flexing his right knee in the waiting room, even
2 though he refused to flex his right knee during the evaluation. (Docket 63-3 at 1). Periodic
3 assessments of Ortega-Candelaria's medical condition, including functional capacity
4 evaluations, are required as part of the Plan's determination for benefit eligibility. (Docket
5 63-1 at 10, 14 27.) The evidence demonstrating Ortega-Candelaria's failure to fulfill the
6 requirements of the assessments justifies the plan administrator's denial of long-term
7 disability benefits on the basis of Ortega-Candelaria's non-cooperation during his
8 evaluation. Because this evidence supports that decision, it is not arbitrary and capricious.

9 In response, Ortega-Candelaria claims that he was simply following the orders of his
10 treating physician by refusing to perform tasks during the evaluation that could injure him.
11 But, Ortega-Candelaria had successfully completed evaluations in the past without being
12 found uncooperative, so we are confident that he understood how to try the tasks requested
13 of him, even if he could not complete every one. In any event, the point is not whether
14 *every* observer would have agreed Ortega-Candelaria was uncooperative, but whether the
15 *plan administrator* had sufficient evidence to conclude that he was uncooperative. Gannon
16 v. Metropolitan Life Ins. Co., 360 F.3d 211, 213 (1st Cir. 2004)) ("[T]he existence of
17 medical evidence pointing in two directions does not render arbitrary or capricious a plan
18 administrator's decision to credit one viewpoint or the other."). Such evidence existed here
19 in the form of the evaluator's opinion, and that is enough to assure us that the plan
20 administrator's decision was not arbitrary and capricious.

21 Next, Ortega-Candelaria argues that the plan administrator acted arbitrarily and
22 capriciously by disregarding his treating physician's conclusions about his mental health
23 and ability to work. This argument implies that the opinions of Ortega-Candelaria's treating

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1 physician, Dr. Oscar Ramos-Román, ought to have greater or controlling weight in
2 determining benefit eligibility as opposed to the opinions of evaluators retained on behalf of
3 the plan. But, in the ERISA context, a treating physician's opinion "is not entitled to special
4 deference." Richards v. Hewlett-Packard Corp., 592 F.3d 232, 240 (1st Cir. 2010) (citation
5 omitted); Buffonge v. Prudential Insurance Co. of America, 426 F.3d 20, 27 (1st Cir. 2005).
6 Moreover, the plan administrator evaluated Dr. Ramos-Román's findings; the plan
7 administrator concluded that other medical opinions were more persuasive and that Ortega-
8 Candelaria was no longer eligible for long-term disability benefits. That reasoned
9 conclusion, which is supported by evidence, is not arbitrary and capricious.

10 Accordingly, Ortega-Candelaria's contention that Johnson & Johnson acted
11 arbitrarily and capriciously in denying him long-term disability benefits is **DENIED**.

12 **IV.**

13
14 **Conclusion**

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16 For the foregoing reasons, we hereby **GRANT** Defendants' motion and **DISMISS**
17 **WITH PREJUDICE** Plaintiff's claims. Judgment shall be entered accordingly.

18 **IT IS SO ORDERED.**

19 San Juan, Puerto Rico, this 26th day of March, 2013.

20 s/José Antonio Fusté
21 JOSE ANTONIO FUSTE
22 United States District Judge